

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL ANTHONY ABELS,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Case No. 07-5303 RBL/KLS

ORDER DENYING MOTIONS FOR  
DEFAULT, FOR COUNSEL AND  
GRANTING MOTION TO STAY  
DISCOVERY

Before the Court are various motions of Plaintiff for default (Dkt. # 48), for discovery (Dkt. # 41, 47, 55, and 54), for clarification and for the appointment of counsel (Dkt. # 49). Also pending before the Court is Defendants' motion to dismiss, raising qualified immunity as a defense. (Dkt. # 33). Defendants oppose Plaintiffs' motions and request a stay of discovery pending the Court's determination of the issue of qualified immunity.

**DISCUSSION**

Motion to Stay Discovery. The Court first turns to Defendants' motion to stay discovery pending a decision on its motion to dismiss, raised in their response to Plaintiff's various motions. (*See* Dkt. # 50). The Court finds that the motion to stay should be granted. Defendants raised qualified immunity as a defense. (Dkt. # 33). A court may relieve a party of the burdens of discovery while a dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989), amended at 906 F.2d 465 (9th Cir. 1990); *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984). When government officials raise the issue of qualified immunity, discovery should not proceed until this threshold issue is resolved by the court. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727,

1 2738 (1982); *Anderson v. Creighton*, 483 U.S. 635, 646 N.6, 107 S. Ct. 3034, 3042 N.6 (1987);  
2 *DiMartini v. Ferrin*, supra, 889 F.2d at 926.

3 Based upon the foregoing authorities, the Court finds that the parties should not be burdened  
4 with the expense of discovery until the Court has resolved the pending issue of qualified immunity.

5 Accordingly, the parties shall not engage in any discovery until further order of this Court.  
6 If the Court determines that Defendants are not entitled to qualified immunity, it will issue an order  
7 directing that the parties may then commence discovery.

8 Motion for Default. Plaintiff seeks an order for default against the named Defendants and  
9 the parties terminated from this action in October with the filing of his Amended Complaint. (Dkt. #  
10 48). Plaintiff alleges generally that all of these individuals have failed to respond to oral  
11 depositions, written depositions, interrogatories, requests for production and requests for  
12 admissions. (*Id.*). Plaintiff has not included a certification that he made any attempt to meet and  
13 confer with counsel for the named Defendants regarding any outstanding discovery issues in either  
14 of the motions. Before a party may bring a motion to compel discovery, he must make a good faith  
15 effort to meet and confer regarding the outstanding discovery at issue. Fed. R. Civ. P. 37 (2)(b).  
16

17 In addition, defense counsel's attempts to discuss discovery issues with Plaintiff were  
18 apparently unsuccessful. (Dkt. # 51, Exh. 1). Plaintiff is referred to this Court's earlier Order  
19 denying his motion for default (Dkt. # 43) and Rules 26 through 37 of the Federal Rules of Civil  
20 procedure governing discovery.

21 Based on the foregoing reasons and because the Court has determined that all discovery  
22 shall be stayed pending this Court's determination of Defendants' motion to dismiss, Plaintiff's  
23 motion for default shall be denied.  
24  
25

1        Motions for Discovery. Plaintiff has also filed a motion to depose Defendants (Dkt. # 41),  
2 motions for discovery (Dkt. # 47 and # 55) and a motion compelling discovery (Dkt. # 54).<sup>1</sup>

3        Plaintiff is directed to Rules 26 through 37 of the Federal Rules of Civil Procedure governing  
4 the scope and limits of discovery. Plaintiff must first serve the opposing parties with his discovery  
5 requests and allow thirty days for the parties to respond to his discovery requests before he files a  
6 motion to compel with the Court. In addition, prior to filing a motion to compel, Plaintiff must meet  
7 and confer with Defendants or counsel for Defendants in an attempt to resolve any discovery issues as  
8 required by Fed. R. Civ. P. 37(a)(2)(B). Then, when Plaintiff files his motion to compel, he must  
9 include a certification with the motion that he has met and conferred in an attempt to resolve all  
10 discovery disputes. Only then will the Court entertain a motion to compel.  
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12        For the foregoing reasons and because the Court has determined that all discovery shall be  
13 stayed pending this Court's determination of Defendants' motion to dismiss, Plaintiff's motions for  
14 discovery shall be denied.

15        Motion for Counsel. Plaintiff has filed a motion for clarification and a second motion for  
16 the assignment of counsel. (Dkt. # 49). This is Plaintiff's second motion for counsel. Plaintiff's  
17 previous motion for the appointment of counsel was denied. (Dkt. # 21). Plaintiff has not  
18 identified any exceptional circumstances which would lead the Court to reconsider its previous  
19 ruling that counsel is not necessary in this case. Although Plaintiff complains that he is not learned  
20 in the law, the issues in this case are not complex and Plaintiff has demonstrated an adequate ability  
21 to articulate his claims *pro se*. Plaintiff also states that he suffers from certain medical conditions.  
22 However, there is no evidence before the Court that these conditions affect Plaintiff's ability to  
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24        <sup>1</sup>These latter two motions are noted for February 1, 2008, but the Court is addressing all  
25 outstanding discovery motions at this time in light of its decision to stay discovery pending a  
26 decision on Defendants' motion to dismiss.

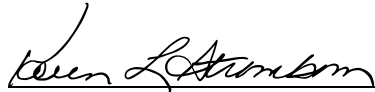
1 litigate his case.

2 Accordingly, it is **ORDERED:**

3 (1) Plaintiff's motions (Dkt. # 41, 47, 48, 49, 55 and 54) are **DENIED**;

4 (2) The Clerk of the Court shall send copies of this Order to Plaintiff and counsel for  
5 Defendants.

6 DATED this 28th day of January, 2008.

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9 Karen L. Strombom  
10 United States Magistrate Judge  
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